

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

DERRYCK HENSON,

Petitioner, : Case No. 1:12-cv-602

- vs -

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

WARDEN, Lebanon Correctional Institution,

Respondent.

**REPORT AND RECOMMENDATIONS ON MOTION FOR
CERTIFICATE OF APPEALABILITY**

This habeas corpus case is before the Court on Petitioner's Motion for A Certificate of Appealability (Doc. No. 18). Filed post-judgment, the Motion is deemed referred under 28 U.S.C. § 636(b)(3).

In the Report and Recommendations on the merits, the Magistrate Judge recommended that the Petition be dismissed with prejudiced as barred by the statute of limitations, a defense raised by the Warden (Doc. No. 11). The Report also recommended that Henson be granted a certificate of appealability on his claim that the statute should be equitably tolled in this case. *Id.* at PageID 1263. Petitioner filed no objections and Judge Barrett adopted the Report as filed. Because he filed no objections, Henson is limited in the issues he can raised on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).

However, the Warden did not object to the recommendation that Henson be granted a certificate of appealability on the equitable tolling issue. Therefore the Court should issue a

certificate of appealability limited to the question whether Henson is entitled to equitable tolling of the AEDPA one-year statute of limitations.

November 21, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).